BSN Merchant Bank Bhd v George a/l Thomas

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-416 OF 1996
SITI NORMA YAAKOB, AHMAD FAIRUZ AND DENIS ONG JJCA
5 APRIL 2000

Banking *— Banks and banking business — Assumption of control of bank by Central Bank — Institution of proceedings by bank — Whether assumption of control order rendered bank a non-entity and empower Bank Negara to withdraw its licence automatically — Whether bank could still institute proceedings in its own name — Suit filed in bank's own name was defective — Whether defect was curable by the proper and prospective plaintiff rectifying and continuing with the action in bank's place — Banking and Financial Institutions (Rakyat Merchant Bankers Bhd) (Assumption of Control) Order 1994*

The respondent was one of two guarantors who was sued by Rakyat Merchant Bankers Bhd ('Rakyat'). The writ was filed by Rakyat's solicitors, Messrs Lee Hishamuddin on 12 July 1995. It was not disputed that on 2 March 1994, the Banking and Financial Institutions (Rakyat Merchant Bankers Bhd) (Assumption of Control) Order 1994 ('the 1994 order') was issued authorizing Bank Negara to assume control of the whole of the property, business and affairs of Rakyat. On 22 July 1995, on the joint application of Rakyat and BSN Merchant Bank Bhd ('the appellant'), the High Court made a vesting order vesting the entire assets and liabilities of Rakyat to the appellant including the right to continue with proceedings in any court of law in which Rakyat was a party. The respondent applied under O 18 r 19 of the Rules of the High Court 1980 to have the writ and statement of claim struck out on the grounds that: (i) Rakyat was no longer a legal entity as it had been struck off the register by the Registrar of Companies and that its licence to operate its business as a merchant bank had been withdrawn by Bank Negara and that the proceedings was an abuse of the process of court; and (ii) consequently Messrs Lee Hishammuddin could no longer continue to represent Rakyat, a non-existent entity. Rakyat had successfully applied for leave to introduce fresh evidence by the filing of an affidavit exhibiting proof of authority in the form of two powers of attorney ('the PA'). The first PA was executed after the 1994 order was made but before the writ action was filed. By the terms of the first PA, Bank Negara appointed one Tay Bin Chat ('Tay') with full power of substitution to be its attorney for and on behalf of Rakyat to do all those acts and things as specified in five numbered paragraphs. Paragraph 3 empowered Tay, inter alia, to take proceedings in bankruptcy against persons for any debt, demand or claim due or claimed by Rakyat and to take all steps and do all things requisite for recovering and making good any debts, demand or claim against any person. Tay had formally written to Messrs Lee Hishamuddin confirming his earlier instructions made on or before 6 February 1995 for Messrs Lee Hishamuddin to proceed against the respondent. The

trial judge confirmed the decision of the senior assistant registrar in allowing the respondent's application. The appellant appealed.

Held, allowing the appeal:

(1) As at 12 July 1995 when Rakyat filed the writ action against the respondent, the 1994 order was already in existence. In the absence of any proof that it had been placed under receivership or wound up either voluntarily or by the court, the respondent could not be heard to say that the Registrar of Companies had struck Rakyat off his register. Likewise the respondent must establish by way of documentary proof that Rakyat's licence had been revoked, surrendered or withdrawn by Bank Negara. The 1994 order did not have the effect of rendering Rakyat a non-entity and neither did it empower Bank Negara to withdraw its licence automatically (see pp 196I–197B).

(2) By the very tenor and language of the 1994 order, all the powers and functions of Rakyat's Board of Directors were suspended and such powers and functions were assumed by Bank Negara who would carry on the business and affairs of Rakyat in the name and on behalf of Rakyat until such time the 1994 order was revoked. The 1994 order did not have the effect of conferring or vesting in Bank Negara any title or any beneficial interest in any property registered in Rakyat's name. As such, Rakyat continued to exist as a legal entity despite the 1994 order (see p 197D–G).

(3) Any cause of action that accrued to Rakyat was not taken away and surrendered to Bank Negara. It still accrued to Rakyat. Rakyat can legally enforce or pursue that right by instituting proceedings in its own name (see p 197G).

(4) Rakyat's conduct in filing a suit in its own name was only defective as to form only and not in substance and such defect was not fatal but curable by the proper and prospective plaintiff rectifying and continuing with the action in place of Rakyat. That proper and prospective plaintiff was the appellant who rightly took over the conduct of the proceedings after the vesting order was made. By so adopting the action on behalf of Rakyat, the appellant had cured whatever defect was present at the time the action was commenced (see p 198A–C).

(5) Reading para 3 of the first PA and Tay's letter confirming his instruction to Messrs Lee Hishamuddin to file proceedings on behalf of Rakyat, it was clear that as at 12 July 1995 Messrs Lee Hishamuddin had the necessary authority to act on behalf of Rakyat. In the circumstances of this case, the court found that there was no question of any abuse of process when Messrs Lee Hishamuddin filed this writ action on behalf of Rakyat (see p 200A–C).

A **[Bahasa Malaysia summary**

Responden adalah salah seorang penggerenti-penggerenti yang telah didakwa oleh Rakyat Merchant Bankers Bhd ('Rakyat'). Writ tersebut telah difailkan oleh peguamcara Rakyat, Tetuan Lee Hishamuddin pada 12 Julai 1995. Adalah tidak dipertikaikan bahawa pada 2 Mac B 1994, Perintah Bank dan Institusi-Institusi Kewangan (Rakyat Merchant Bankers Bhd) (Pengambilan Alih Kawalan) 1994 ('Perintah 1994 tersebut') telah dikeluarkan yang memberi kuasa kepada Bank Negara untuk mengambilalih keseluruhan hartanah, perniagaan dan hal-ehwal Rakyat. Pada 22 Julai 1995, atas C permohonan bersesama oleh Rakyat dan BSN Merchant Bank Bhd ('perayu tersebut'), Mahkamah Tinggi telah membuat perintah letakhak yang meletakhak keseluruhan aset-aset dan tanggungan Rakyat kepada perayu tersebut termasuk hak untuk meneruskan prosiding dalam mana-mana mahkamah undang-undang dalam mana Rakyat merupakan satu pihak. Responden memohon di bawah A 18 D k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 supaya writ dan pernyataan tuntutan tersebut dibatalkan atas alasan bahawa: (i) Rakyat bukan lagi merupakan sebuah entiti yang sah kerana ia telah dibatalkan dari daftar oleh Pendaftar Syarikat dan bahawa lesennya untuk mengendalikan perniagaannya sebagai sebuah bank saudagar E telah ditarik-balik oleh Bank Negara dan bahawa prosiding tersebut merupakan suatu penyalahgunaan proses mahkamah; dan (ii) akibatnya Tetuan Lee Hishamuddin tidak lagi boleh terus mewakili Rakyat, suatu entiti yang tidak wujud. Rakyat telah berjaya memohon kebenaran untuk mengemukakan keterangan baru dengan pemfailan satu afidavit yang mengekshibitkan bukti kuasa dalam F bentuk dua surat kuasa wakil ('PA'). PA yang pertama telah disempurnakan selepas perintah 1994 dibuat tetapi sebelum tindakan writ difailkan. Menurut terma-terma PA yang pertama, Bank Negara telah melantik seorang bernama Tay Bin Chat ('Tay') dengan kuasa penggantian sepenuhnya bagi menjadi wakilnya untuk dan bagi pihak Rakyat untuk melakukan semua perbuatan-perbuatan dan perkara- G perkara seperti yang ditetapkan dalam lima perenggan bernombor. Perenggan 3 memberi kuasa kepada Tay, antara lainnya untuk melaksanakan prosiding kebankrapan terhadap orang-orang bagi apa-apa hutang, permintaan atau tuntutan yang kena dibayar atau dituntut oleh Rakyat dan hendaklah mengambil segala langkah dan H melakukan segala perkara yang perlu bagi memperolehi semula dan melangsaikan apa-apa hutang, permintaan atau tuntutan terhadap mana-mana orang. Tay telah secara rasmi menulis kepada Tetuan Lee Hishamuddin mengesahkan arahan beliau yang awal yang telah dibuat pada atau sebelum 6 Februari 1995 supaya Tetuan Lee Hishamuddin meneruskan tindakan terhadap responden. I Hakim perbicaraan mengesahkan keputusan penolong kanan pendaftar dalam membenarkan permohonan responden. Perayu telah merayu.

Diputuskan, membenarkan rayuan tersebut: A

(1) Setakat 12 Julai 1995 ketika Rakyat memfailkan tindakan writ terhadap responden, perintah 1994 tersebut telah pun wujud. Dalam ketiadaan sebarang bukti bahawa ia telah diletakkan di bawah penerimaan atau telah digulung pada awalnya, sama ada secara sukarela atau oleh mahkamah, responden tidak boleh B memperkatakan bahawa Pendaftar Syarikat telah membatalkan Rakyat daripada daftarnya. Begitu juga responden mestilah menentukan melalui bukti dokumentar bahawa lesen Rakyat telah dibatalkan, diserah-balik atau ditarik-balik oleh Bank Negara. Perintah 1994 tersebut tidak mempunyai kesan menjadikan Rakyat sebuah bukan entiti dan ia juga tidak memberikan kuasa C kepada Bank Negara untuk menarikbalik lesennya secara automatik (lihat ms 196I–197B).

(2) Menurut bahasa dan maksud perintah 1994 tersebut, semua kuasa-kuasa dan fungsi-fungsi Lembaga Pengarah Rakyat telah digantung dan kuasa-kuasa serta fungsi-fungsi yang sedemikian D telah diambil oleh Bank Negara yang akan menjalankan perniagaan dan hal-ehwal Rakyat atas nama dan bagi pihak Rakyat sehingga satu masa ketika perintah 1994 tersebut dibatalkan. Perintah 1994 tersebut tidak mempunyai kesan memberikan atau meletakhak ke atas Bank Negara sebarang hakmilik atau pun sebarang kepentingan benefisial dalam E mana-mana hartanah yang didaftarkan atas nama Rakyat. Oleh yang demikian, Rakyat berterusan wujud sebagai sebuah entiti yang sah meskipun terdapatnya perintah 1994 tersebut (lihat ms 197D–G).

(3) Sebarang kausa tindakan yang terakru kepada Rakyat telah tidak F diambil dan diserahkan kepada Bank Negara. Ia masih terakru kepada Rakyat. Rakyat boleh secara sah menguatkuasakan atau meneruskan hak tersebut dengan memulakan prosiding atas namanya sendiri (lihat ms 197G)

(4) Perlakuan Rakyat dalam memfailkan satu guaman atas namanya sendiri hanya tidak sempurna menurut bentuk sahaja dan G bukannya mengikut substans dan ketidaksempurnaan yang sedemikian bukannya memudaratkan tetapi boleh dipulihkan oleh bakal plaintif yang sebenarnya dengan memperbaiki dan meneruskan dengan tindakan tersebut bagi menggantikan Rakyat. Bakal plaintif yang betul itu adalah perayu yang H sewajarnya mengambilalih pengendalian prosiding tersebut selepas perintah letakhak dibuat. Dengan menerima-pakai tindakan tersebut sedemikian bagi pihak Rakyat, perayu telah memulihkan apa pun ketidak-sempurnaan yang wujud ketika tindakan tersebut dimulakan (lihat ms 198A–C).

(5) Dengan membaca perenggan 3 surat PA yang pertama dan Tay I yang mengesahkan arahannya kepada Tetuan Lee Hishamuddin untuk memfailkan prosiding bagi pihak Rakyat, adalah jelas

A bahawa setakat 12 Julai 1995 Tetuan Lee Hishamuddin mempunyai kuasa yang perlu untuk bertindak bagi pihak Rakyat. Dalam keadaan kes ini, mahkamah mendapati bahawa tidak terdapat persoalan mengenai sebarang penyalahgunaan proses apabila Tetuan Lee Hishamuddin memfailkan tindakan writ ini bagi pihak Rakyat (lihat ms 200A–C).]

B

Notes

For cases on banks and banking business generally, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1306–1409.

C

Cases referred to

Danish Mercantile Co Ltd & Ors v Beaumont & Anor [1951] 1 All ER 925 (refd)

D

Legislation referred to

Banking and Financial Institutions Act 1989 ss 7, 12, 13, 73(2)(a), 76(1), (2), (3), (4), (5)

Banking and Financial Institutions (Rakyat Merchant Bankers Bhd) (Assumption of Control) Order 1994

E Companies Act 1965, Part X

Rules of the High Court 1980 O 18 r 19

Appeal from: Suit No D5–22–370 of 1995 (High Court, Kuala Lumpur)

F *DP Naban* (*KA Gan* with him) (*Lee Hishammuddin*) for the appellant.
Michael Tan Lip Yip (*Tan Lip Yip*) for the respondent.

Siti Norma Yaakob JCA (delivering judgment of the court): The respondent is one of two guarantors who was sued by Rakyat Merchant Bankers Bhd ('Rakyat') together with his co-guarantor and the principal G borrower in the court below for the return of a term loan facility granted by Rakyat to the principal borrower. The writ was filed by Rakyat's solicitors, Messrs Lee Hishammuddin on 12 July 1995, and the respondent, together with his co-guarantor, filed a joint statement of defence dated 27 February 1996. In para 2 of the statement of defence, the respondent questioned the status of Rakyat on the ground that it had no locus standi to institute and H continue the proceedings against him and his co-guarantor.

The filing of the statement of defence was immediately followed by the filing of a Summons in Chambers dated 28 February 1996, wherein the respondent applied under O 18 r 19 of the Rules of the High Court 1980, to have the writ and statement of claim struck out on the following I grounds.

(1) That Rakyat had no legal right or locus standi to file and continue prosecuting him.

(2) Messrs Lee Hishammuddin, Rakyat's solicitors had no legally constituted authority to continue representing Rakyat. A

(3) That the instant proceedings against him was an abuse of process.

The senior assistant registrar who heard the application agreed with the respondent and allowed his application on terms. On appeal, the judge confirmed that decision and dismissed the appeal with costs and it was B under those circumstances that the parties came before us.

It is not disputed that as at 12 July 1995, when the writ and statement of claim was filed, Rakyat, a licensed merchant bank, was already declared insolvent. This was so as on 2 March 1994, the Minister of Finance, acting under s 73(2)(a) of the Banking and Financial Institutions Act 1989, C ('BAFIA') and on the recommendation of Bank Negara Malaysia, made an order cited as the Banking and Financial Institutions (Rakyat Merchant Bankers Bhd) (Assumption of Control) Order 1994 ('the 1994 order') authorizing Bank Negara to assume control of the whole of the property, business and affairs of Rakyat and to carry on the whole of its business and affairs. The 1994 order was published in the Government Gazette the same D day it was issued and came into force on 3 March 1994.

On 22 July 1995, on the joint application of Rakyat and BSN Merchant Bank Bhd, the present appellant before us, the High Court made a vesting order vesting the entire assets and liabilities of Rakyat to the appellant including the right to continue with proceedings in any court of law in which E Rakyat was a party. The vesting order was made to give full effect to an agreement entered into a month earlier, dated 15 June 1995, between Rakyat and the appellant, wherein Rakyat transferred all its assets and liabilities standing in its name as at 1 August 1995, to the appellant.

It was under those circumstances that the appellant came into the picture and took over the conduct of this suit by notice dated 5 April 1996, F a week before the application to set aside was heard and nine months after the vesting order was made.

In his affidavit supporting his application, the respondent raised two issues.

(1) That Rakyat was no longer a legal entity as it has been struck off the G register by the Registrar of Companies and that its licence to operate its business as a merchant bank had been withdrawn by Bank Negara and that the instant proceedings is an abuse of the process of court.

(2) Consequently Messrs Lee Hishammuddin can no longer continue to represent Rakyat, a non-existent entity. H

The same contentions were canvassed before us and with regard to the first issue, we need to consider Rakyat's legal status, firstly at the time it instituted proceedings against the respondent and secondly after the vesting order was made on 22 July 1995.

As at 12 July 1995 when Rakyat filed the writ action against the I respondent, the 1994 order was already in existence having been issued sixteen months earlier. What was Rakyat's legal status then? In the absence

of any proof that it had been placed under receivership or wound up either voluntary or by the court, we say that the respondent cannot be heard to say that the Registrar of Companies had struck Rakyat off his register. Likewise the respondent must establish by way of documentary proof that Rakyat's licence had been revoked, surrendered or withdrawn by Bank Negara. This is so as we say that the 1994 order does not have the effect of rendering Rakyat a non-entity and neither does it empower Bank Negara to withdraw its licence automatically.

The law relating to the winding-up of a company is governed by Part X of the Companies Act 1965, and before us no reference was made to any provision of that part of the Companies Act to establish that Rakyat had become incapacitated by a winding-up or dissolution order made against it.

On the same token, we have gone through BAFIA to consider under what circumstances can a licence granted to a financial institution be revoked, surrendered or withdrawn. The provisions of ss 7, 12 and 13 of BAFIA are relevant but we do not have the proof nor are we made aware whether any action had been taken against or by Rakyat to bring itself within the relevant provisions of BAFIA to enable the respondent to hold out that Bank Negara had cancelled or revoked Rakyat's licence to operate as a merchant bank.

On the contrary, by the very tenor and language of the 1994 order, it merely empowers Bank Negara to assume control of the property, business and affairs of Rakyat and to carry on with its business and affairs as Rakyat was in no position to manage its affairs financially. What this means in practice is that all the powers and functions of Rakyat's Board of Directors are suspended and such powers and functions are assumed by Bank Negara, who would carry on the business and affairs of Rakyat in the name and on behalf of Rakyat until such time the 1994 order is revoked. We say that the 1994 order does not have the effect of conferring or vesting in Bank Negara any title or any beneficial interest in any property registered in Rakyat's name. See ss 76(1)–(5) of BAFIA.

As such, Rakyat continued to exist as a legal entity despite the 1994 order although it had no say in the control and management of its business and affairs. That had become the responsibility of Bank Negara at least until it was taken over by the appellant following the granting of the vesting order. Under these circumstances we say that any cause of action that accrued to Rakyat, was not taken away and surrendered to Bank Negara. It still accrued to Rakyat. But can Rakyat legally enforce or pursue that right by instituting proceedings in its own name as was done in this case? We say it can as firstly Rakyat was and is still a legal entity despite the 1994 order and there was no necessity to drag in Bank Negara. Rakyat had a valid cause of action against the respondent based on the guarantee dated 14 June 1993, executed by the respondent with it. However considering the circumstances in which Rakyat had been placed and in view of the 1994 order, it would have been *desirable* had Rakyat impleaded the 1994 order and condescend to some particulars in its statement of claim particularly whether it had the authority to institute the writ action in its name.

We fully appreciate and agree with the trial judge's finding that filing the writ action was very much an exercise of a function which, under the 1994 order had been assumed by Bank Negara. Nevertheless when considering that what is being complained of is Rakyat's conduct in filing a suit in its own name and is not concerned with the accrual of the cause of action to Rakyat, we say that such conduct is only defective as to form only and not in substance and we consider that such defect is not fatal but curable by the proper and prospective plaintiff rectifying and continuing with the action in place of Rakyat.

That proper and prospective plaintiff is the appellant who rightly took over the conduct of the proceedings after the vesting order was made. By so adopting the action on behalf of Rakyat, the appellant had cured whatever defect was present at the time the action was commenced. That same analogous position was present in *Danish Mercantile Co Ltd & Ors v Beaumont & Anor* [1951] 1 All ER 925 where a solicitor had started proceedings in the name of a company without verifying whether he had the proper authority to do so. The English Court of Appeal held that as long as the matter rested there, the action was not properly constituted and in that sense a nullity. However it was open to the purported plaintiff at any time to rectify the act of the solicitor who started the action to adopt the proceedings and to instruct him to continue them. When that was done then under the law of principal and agent and under the doctrine of ratification, the defect in the proceedings originally constituted was cured and it was no longer open to the defendant to object that the proceedings thus ratified and adopted were in the first instance brought without proper authority. After discussing a number of cases cited before the court, Jenkins LJ had this to say at p 929:

> I find nothing in any of those cases to constrain me to hold that the issue of a writ and the commencing of an action without the authority of the purported plaintiff is a matter which admits of no validation by subsequent ratification of the act of the solicitor concerned. So to hold would be to introduce, as I see it, an entirely novel doctrine into the ordinary law of principal and agent, and to make a new exception to the general rule that every ratification relates back, and is deemed equivalent, to an antecedent authority. In the absence of any decision compelling me to do so, I, speaking for myself, decline so to hold.

Likewise we consider that the moment the appellant stepped into Rakyat's shoes to continue the proceedings on behalf of Rakyat, the issue of Rakyat's locus standi, if any, ceased to exist.

Turning to the respondent's second objection and this relates to the lack of authority on the part of Messrs Lee Hishammuddin to represent Rakyat, we find that there has been some confusion as to the scope and extent of the objection. Since it was raised for the first time in the respondent's joint statement of defence, we reproduce that particular averment (which comes only in Bahasa Malaysia) for ease of reference:

> 3 Oleh itu, Tetuan Lee Hishammuddin Peguam bagi plaintif yang dinamakan dalam tindakan ini tidak ada 'proper legally constituted authority' untuk meneruskan dengan tindakan untuk Rakyat Merchant

> Bankers Bhd, Plaintiff yang dinamakan di dalam tindakan ini sebagai Rakyat Merchant Bankers Bhd telah tamat kewujudannya sebagai suatu 'legal entity' dan untuk Tetuan Lee Hishammudin meneruskan tujuan bertindak untuk Rakyat Merchant Bankers Bhd adalah suatu kepenyalahgunaan proses Mahkamah ini dan saya akan mencabar mereka bagi memperolehi 'proper legal authority' mereka sekarang dari Rakyat Merchant Bankers Bhd bagi meneruskan tindakan untuk Rakyat Merchant Bankers Bhd.

That same averment is again pleaded as para 3 in the respondent's affidavit in support of his application to set aside.

It is our understanding that what that averment means is that Messrs Lee Hishammuddin had no proper legally constituted authority to continue with the proceedings on behalf of Rakyat as Rakyat had become non-existent following its cancellation as a legal entity by the Registrar of Companies and the cancellation of its licence by Bank Negara as pleaded in para 2 of the respondent's joint statement of defence and again in his affidavit in support.

It is trite law that parties are bound by their pleadings. So if we go by the objection as pleaded, it is our opinion that such objection is a non-issue as we have already shown that Rakyat continues to be a legal entity as only its business and affairs have been taken over firstly by Bank Negara under the 1994 order and finally by the appellant following the vesting order. Its identity and standing have always remained intact and have not been disintegrated.

That argument would have disposed of the respondent's objection as pleaded. But that was not to be as in the court below, the respondent extended the scope of his objection by submitting that Messrs Lee Hishammuddin had no authority to *file and commence* this action on behalf of Rakyat.

This forced Rakyat to apply successfully for leave to introduce fresh evidence by the filing of an affidavit exhibiting proof of authority in the form of two powers of attorney, one dated 30 August 1994, ('the first P/A') and the other dated 19 December 1995 ('the second P/A').

It must be noted that the first P/A was executed after the 1994 order was made but before the writ action was filed. By the terms of the first P/A, Bank Negara appointed one Tay Bin Chat @ Tay Ming Chat ('Tay') with full power of substitution to be its Attorney for and on behalf of Rakyat to do all those acts and things as specified in five numbered paragraphs. Paragraph 3 which was never considered by the court below, is relevant, as it empowers Tay, inter alia, to do the following:

> To take proceedings in bankruptcy ... and other process against ... persons for any debt, demand or claim due to or claimed by Rakyat Merchant Bankers Berhad and to take all steps and do all things requisite for recovering and making good any debts, demand or claim against any person ...

In a follow-up letter dated 27 April 1996, which is exhibited, Tay, as Attorney of Rakyat, had formally written to Messrs Lee Hishammuddin confirming his earlier instructions made on or before 6 February 1995, for

Messrs Lee Hishammuddin to proceed against the respondent, the other co-guarantor and the principal debtor to recover the term loan made by Rakyat.

Reading para 3 of the first P/A, which empowers Tay as Attorney of Rakyat to file proceedings on behalf of Rakyat and the letter dated 27 April 1996 which confirmed that he had instructed Messrs Lee Hishammuddin on or before 6 February 1995, to file proceedings on behalf of Rakyat, it is clear that as at 12 July 1995, when the writ action was filed and commenced, Messrs Lee Hishammuddin had the necessary authority to act on behalf of Rakyat.

We need say no more of the second P/A as it was executed to cover the situation after the vesting order was made and therefore not relevant to the respondent's objection that Messrs Lee Hishammuddin had no legally constituted authority to file and commence this action on behalf of Rakyat. In the circumstances of this case we find that there is no question of any abuse of process when Messrs Lee Hishammuddin filed this writ action on behalf of Rakyat.

For the reasons given in this judgment, we cannot support the findings of the trial judge and to that end, we set aside such findings and allow this appeal with costs here and below. The deposit is to be refunded to the appellant.

Appeal allowed.

Reported by Jafisah Jaafar